

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

APPENDIX H

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS MELISSA ECCLESTON (b) County of Residence of First Listed Plaintiff <u>CAMDEN</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) <div style="text-align: right; margin-right: 50px;">Katherine C. Oeltjen, Esquire Console Law Offices LLC 110 Marter Avenue Suite 105 Moorestown, NJ 08057</div> 856-854-4000	DEFENDANTS EPIC DEVELOPMENTAL SERVICES, EPIC HEALTH SYSTEMS, INC., HBA MANAGEMENT, INC. d/b/a WEISMAN CHILDREN'S REHAB HOSPITAL County of Residence of First Listed Defendant <u>DALLAS</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) <table style="width: 100%;"> <tr> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> <td></td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5</td> <td></td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> <td></td> </tr> </table>	PTF	DEF	PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4		Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6	
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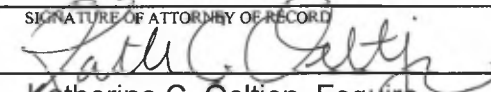
IV. NATURE OF SUIT (Place an "X" in One Box Only)	
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 440 Other Civil Rights
FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN (Place an "X" in One Box Only)							
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Conscientious Employee Protection Act, N.J.S.A. 34:19-1, et seq. ("CEPA") and New Jersey common law Brief description of cause: Plaintiff brings this claim against her former employers for wrongful termination.
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/> DEMAND \$ in excess of \$100,000 CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions):	JUDGE	DOCKET NUMBER
n/a			

DATE	SIGNATURE OF ATTORNEY OF RECORD
November 16, 2016	

FOR OFFICE USE ONLY	Katherine C. Oeltjen, Esquire
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RECEIPT #	AMOUNT	APPLYING IFP	JUDGE	MAG. JUDGE
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IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

MILISSA ECCLESTON
226 E. Maddison Avenue
Collingswood, NJ 08108

Plaintiff,

v.

EPIC DEVELOPMENTAL SERVICES
5220 Spring Valley Road
Suite 400
Dallas, TX 75254

and

EPIC HEALTH SYSTEMS, INC.,
5220 Spring Valley Road
Suite 400
Dallas, TX 75254

and

HBA MANAGEMENT, INC.
d/b/a
WEISMAN CHILDREN'S REHAB
HOSPITAL,
5310 NW 33rd Ave, Suite 211
Fort Lauderdale, Florida 33309-6319

Defendants.

CIVIL ACTION NO.

JURY TRIAL DEMANDED

COMPLAINT

I. INTRODUCTION

1. Plaintiff, Milissa Eccleston, brings this action against her former employers, Epic Developmental Services ("Defendant EDS"), Epic Health Services, Inc. ("Defendant Epic") (collectively, "Epic Defendants"), and HBA Management, Inc. d/b/a Weisman Children's Rehab Hospital ("Defendant Weisman") (collectively, "Defendants"). Plaintiff's employment was wrongfully terminated after she complained that Defendant Weisman failed to follow New Jersey state law, public policy and its own internal policy and notify child welfare officials that a child left

in Defendant Weisman's care appeared to be experiencing extreme neglect. When Plaintiff's supervisors ignored her complaints, she followed the law (and her obligations as a mandatory reporter of child abuse and neglect) and notified New Jersey's Child Protection and Permanency service ("CPPS"). When CPPS began investigating Plaintiff's complaint on Defendant Weisman's premises, Defendant Weisman terminated her employment and the Epic Defendants refused to offer Plaintiff any other placements, effective immediately, because she "went behind their back" and reported neglect of a child to CPPS, in violation of the Conscientious Employee Protection Act, N.J.S.A. 34:19-1, *et seq.* ("CEPA") and New Jersey common law. Plaintiff seeks damages, including front and back pay, compensatory and punitive damages, as well as costs, attorneys' fees, and all other relief that this Court deems appropriate.

II. PARTIES

2. Plaintiff, Milissa Eccleston ("Plaintiff"), is an individual and a citizen of the State of New Jersey. She resides in Collingswood, New Jersey.

3. Epic Developmental Services is a wholly owned subsidiary of Epic Health Services, Inc. Both Defendant EDS and Defendant Epic have a principle place of business located at 5220 Spring Valley Road, Suite 400, Dallas, TX 75254.

4. Epic Defendants regularly conduct business in the State of New Jersey.

5. Defendant HBA Management, Inc., d/b/a Weisman Children's Rehab Hospital is a Florida corporation with its principle place of business located at 5310 NW 33rd Ave Suite 211, Fort Lauderdale, Florida 33309-6319.

6. Defendant Weisman regularly conducts business in the State of New Jersey and operates a medical day care facility at 2475 McClellan Ave, Suite B-203, Pennsauken, New Jersey 08109.

7. At all times material hereto, Epic Defendants acted by and through their authorized agents, servants, workmen, and /or employees acting within the course and scope of their employment with Epic Defendants and in furtherance of Epic Defendants' business.

8. At all times material hereto, Defendant Weisman acted by and through its authorized agents, servants, workmen, and /or employees acting within the course and scope of their employment with Defendant Weisman and in furtherance of Defendant Weisman's business.

9. At all times material hereto, Defendant EDS was an employer within the meanings of the causes of action that forms the basis of this Complaint.

10. At all times material hereto, Defendant Epic was an employer within the meanings of the causes of action that forms the basis of this Complaint.

11. At all times material hereto, Defendant Weisman was an employer within the meanings of the causes of action that forms the basis of this Complaint.

12. At all times material hereto, Plaintiff was an employee of Defendant EDS, Defendant Epic and Defendant Weisman within the meanings of the causes of action that forms the basis of this Complaint.

III. JURISDICTION AND VENUE

13. The causes of action which forms the basis of this matter arises under CEPA and the common law of New Jersey.

14. The District Court has jurisdiction over all counts pursuant to 28 U.S.C. § 1332 since the amount in controversy in the present action exceeds the sum or value of seventy-five thousand dollars (\$75,000), exclusive of interests and costs, and as there exists complete diversity of citizenship, as Plaintiff is a citizen of the State of New Jersey and Defendants are not citizens of the State of New Jersey, but are citizens of Texas and Florida.

15. Venue is proper in the District Court under 28 U.S.C. § 1391(b).

IV. FACTUAL ALLEGATIONS.

16. Plaintiff is certified as a registered behavioral technician certified by the Behavior Analyst Certification Board (BACB).

17. Plaintiff was hired by Epic Defendants as a behavior technician on or about September 28, 2015.

18. Epic Defendants provide pediatric care services in eighteen states, including New Jersey.

19. Epic Defendants hire behavior technicians to place with client companies where services are provided under the client company's direction and at the client company's worksite.

20. Epic Defendants placed Plaintiff with Defendant Weisman to provide behavior technician services to Weisman Children's Rehab Hospital, Outpatient and Medical Day Care facility, located in Pennsauken, New Jersey.

21. Plaintiff started work at Defendant Weisman in the medical day care on October 16, 2015.

22. Defendant Weisman required Plaintiff to participate in mandatory employee training prior to working with children.

23. During the training, Defendant Weisman told Plaintiff that, consistent with state law, she was a mandatory reporter of abuse and neglect observed during her job. Defendant Weisman further instructed that upon any suspicion of abuse or neglect of a child under Weisman's care (regardless of where the employee believed the abuse and/or neglect to have occurred), the Plaintiff must notify CPPS.

24. Plaintiff's duties included making and typing protocols for behavior plans for individual students, writing letters to parents and making creative motivational incentives for the classroom. Plaintiff also assisted the occupational therapist and speech therapist as needed and assisted children in their daily needs while at daycare, including needs during meal and nap time.

25. Plaintiff was supervised by Weisman's Leslie Alexander, ("Alexander"), Certified Child Life Specialist.

26. Michelle Grady Butkas, ("Butkas"), was Plaintiff's second level supervisor and served as the Director of Nursing for Defendant Weisman.

27. In February 2016, Plaintiff was instructed to work with a child, approximately two-years old, who attended the medical daycare. Plaintiff was told that she needed to work with the child to address a behavior where he was constantly itching and scratching his skin.

28. Plaintiff observed the child and noticed that his skin was red, swollen and flaking. In addition, his skin was scarred and mottled indicating a cycle of scratching and healing. The child had multiple open, bleeding wounds.

29. Plaintiff was concerned that the condition was caused by severe food or environmental allergies and exacerbated by dry air.

30. Plaintiff heard the nurses at the medical day care express their belief that the child's mother was not treating her child for his chronic and debilitating condition and that this constituted neglect.

31. Plaintiff heard that the mother was given medicine for the skin condition but did not treat the child. Further, Plaintiff learned that the child's mother failed to keep a number of medical appointments scheduled to address the potential underlying condition causing her son's painful and chronic skin condition.

32. Plaintiff heard that no one at Weisman had reported the child's condition and the mother's failure to treat same to CPPS despite state law and internal policy requiring that they do so.

33. Plaintiff reasonably believed that Weisman's failure to report the incident to CPPS violated state laws and public policy.

34. Plaintiff met with Butkas regarding the child's condition and the mother's failure to treat same.

35. Plaintiff took the child to Butkas to show his extreme condition. Plaintiff complained to Butkas that no one at Weisman had called CPPS to report the child's neglect despite its own policy regarding reporting child abuse and neglect.

36. Plaintiff further told Butkas that she believed that Defendant Weisman was required to call CPPS to report the neglect.

37. To the best of Plaintiff's knowledge and belief, while acknowledging the serious nature of the child's condition and attempting to arrange treatment for same, Butkas did not call and report the incident to CPPS, nor did she instruct any Weisman employee to do so.

38. On or about February 11, 2016, Plaintiff told Alexander that she wanted to make a hotline call to report neglect of the child to CPPS because she reasonably believed that Weisman was in violation of the law and its own internal policy regarding mandatory reporting of suspected child abuse or neglect.

39. Later in the afternoon on February 11, 2016, Plaintiff called the CPPS hotline and reported her suspicion that the child was being neglected to CPPS.

40. On or about February 12, 2016, Butkas came into the child's classroom and took him to a conference room where representatives from CPPS and Defendant Weisman were waiting.

41. After returning home from work on February 15, 2016, Plaintiff received a call from Epic Defendants.

42. Epic Defendants informed her that Weisman terminated her employment effective immediately because she "went behind their back" and reported neglect of a child to CPPS.

43. Since then, Epic Defendants have refused to place Plaintiff at any client companies.

44. Plaintiff's complaint to CPPS was a motivating factor in Weisman's decision to terminate Plaintiff.

45. Plaintiff's complaint to CPPS was a motivating factor in Epic Defendants' decision to refuse to place her at any other client company.

46. The retaliatory actions taken against Plaintiff would have discouraged a reasonable employee from complaining of improper conduct.

47. As a direct and proximate result of Defendants' unlawful, improper, and retaliatory conduct, Plaintiff has incurred, and may in the future incur, a loss of earnings and/or earning capacity, loss of benefits, pain and suffering, humiliation, mental anguish, loss of life's pleasures, and attorneys' fees and costs.

48. By committing the foregoing acts, Defendants have violated CEPA and the public policy of the State of New Jersey.

COUNT I - CEPA

49. Plaintiff incorporates paragraphs 1 through 48 as if set forth herein in their entirety.

50. Weisman retaliated against Plaintiff by terminating her.

51. Epic Defendants retaliated against Plaintiff by refusing to place her with any other client company, thereby depriving Plaintiff of work.

52. Defendants engaged in conduct, which Plaintiff reasonably believed and/or actually violated New Jersey law and public policy.

53. Defendants retaliated against Plaintiff because Plaintiff reported suspected abuse and neglect to CPPS as required by law and complained of Defendant Weisman's violation of same.

54. Defendants' upper management participated in, or were willfully indifferent to, the violations of CEPA complained of herein, warranting the imposition of punitive damages.

55. As a direct and proximate result of Defendants' violations of CEPA, Plaintiff has suffered the injuries, damages and losses set forth in this Complaint.

56. No previous application has been made for the relief requested herein.

COUNT II – WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY (PIERCE)

57. Plaintiff incorporates paragraphs 1 through 56 as if set forth herein in their entirety and alternatively pleads as follows.

58. New Jersey has a clear public policy to protect and preserve the welfare of children.

59. Plaintiff complained to Weisman regarding Weisman's violation of the clear public policy of protecting and preserving the welfare of children.

60. Plaintiff exercised her rights protected by the clear public policy of protecting and preserving the welfare of children by reporting the child's lack of medical treatment to CPPS.

61. Weisman retaliated against Plaintiff by terminating her in violation of the clear public policy of protecting and preserving the welfare of children.

62. Weisman retaliated against Plaintiff by terminating her for exercising rights protected by the clear public policy of protecting and preserving the welfare of children.

63. Epic Defendants retaliated against Plaintiff by refusing to place her with any other client company, thereby depriving Plaintiff of work, in further violation of the clear public policy of protecting and preserving the welfare of children.

64. Defendants' upper management participated in, or were willfully indifferent to, the violations of public policy complained of herein, warranting the imposition of punitive damages.

65. As a direct and proximate result of Defendants' violations of clear public policy, Plaintiff has suffered the injuries, damages and losses set forth in this Complaint.

66. No previous application has been made for the relief requested herein.

RELIEF

WHEREFORE, Plaintiff Milissa Eccleston seeks damages and legal and equitable relief in connection with all Defendants' improper conduct, jointly and severally, and specifically prays the Court to grant the following relief to Plaintiff by:

(a) Declaring the acts and practices complained of herein to be in violation of the public policy of the state of New Jersey;

(b) Declaring the acts and practices complained of herein to be in violation of CEPA;

(c) Awarding Plaintiff back pay and front pay;

(d) Awarding compensatory damages to Plaintiff to make Plaintiff whole for past and future lost earnings, benefits and earnings capacity which Plaintiff has suffered and will continue to suffer as a result of the unlawful misconduct by Defendants;

(e) Awarding compensatory damages to Plaintiff for past and future emotional upset and pain and suffering;

(f) Awarding Plaintiff costs of her action, together with reasonable attorneys' fees;

(g) Awarding Plaintiff punitive damages;

(h) Awarding Plaintiff such other damages as are appropriate under the causes of action that form the basis of this Complaint; and

(i) Granting such other and further relief as this Court deems appropriate.

CONSOLE LAW OFFICES LLC

Dated: November, 16, 2016

By:


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